

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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JULIE GARCIA,

Plaintiff-Appellee,

v

DALE ANDREW DOYLE,

Defendant-Appellant.

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UNPUBLISHED

November 25, 2008

No. 281233

Saginaw Circuit Court

LC No. 06-061949-NI

Before: O’Connell, P.J., and Smolenski and Gleicher, JJ.

PER CURIAM.

In this automobile negligence action, defendant appeals by delayed leave granted the circuit court’s order denying his motion for summary disposition pursuant to MCR 2.116(C)(10). We reverse and remand, and decide this appeal without oral argument pursuant to MCR 7.214(E).

During a September 20, 2005 automobile collision, plaintiff sustained an incomplete, stable, nondisplaced fracture of her seventh cervical vertebra’s endplate. An emergency room physician prescribed plaintiff pain medication and applied a neck collar. Approximately a month later, a neurosurgeon examined plaintiff and recommended continued immobilization of her neck. In November 2005, the neurosurgeon allowed plaintiff to remove the collar. On December 19, 2005, the neurosurgeon determined that the vertebral fracture had healed and released plaintiff to work without restrictions. Plaintiff received no further treatment for her neck injury.

Before the accident, plaintiff worked as a car wash manager. During the three months that plaintiff’s neck injury rendered her unable to work, the car wash filled her management position. When plaintiff returned to work at the car wash, she accepted a position “working with [the] brushes,” “[s]crubbing cars.” Subsequently, she transferred to a cashier’s post. Plaintiff has not missed any work since December 21, 2005.

At her deposition, plaintiff described continuing shoulder pain “if I overexert myself in that area.” Plaintiff conceded that she continued to enjoy a variety of recreational activities, including taking field trips with her daughter, playing with her children in the yard, walking, and biking. Plaintiff testified that she remained able to perform virtually all other activities, including yard work and household chores. But due to her injury, plaintiff no longer used the

trampoline with her children or pursued her previous hobby, working on cars, although she still continued to actively participate in a billiards league.

Defendant moved for summary disposition pursuant to MCR 2.116(C)(10), asserting that plaintiff could not establish that she had sustained a serious impairment of body function, and that her injuries did not affect her ability to lead her normal life. On September 24, 2007, the circuit court issued an opinion and order denying defendant's motion. The circuit court found that plaintiff raised a genuine issue of material fact regarding whether she had suffered a serious impairment of body function. The circuit court noted that plaintiff's cervical fracture resulted in the loss of her management position, thus substantially reducing her income. The circuit court summarized in relevant part as follows:

[A]lthough the injury Plaintiff sustained as a result of this accident may have been relatively short in duration, the evidence that Plaintiff lost her management position as a result of this injury, suggests that it had much more than a "de-minimis" effect on her general ability to lead her normal life.

We review de novo a circuit court's summary disposition ruling. *Walsh v Taylor*, 263 Mich App 618, 621; 689 NW2d 506 (2004). "In reviewing a motion under MCR 2.116(C)(10), this Court considers the pleadings, admissions, affidavits, and other relevant documentary evidence of record in the light most favorable to the nonmoving party to determine whether any genuine issue of material fact exists to warrant a trial." *Id.* If the moving party fulfills its initial burden, the party opposing the motion must provide the trial court with admissible evidentiary materials demonstrating the existence of a genuine and material issue of disputed fact, and may not rest on mere allegations. MCR 2.116(G)(4), (6); *Quinto v Cross & Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996).

The Legislature has limited tort liability for noneconomic loss to cases in which an injured plaintiff has suffered "a serious impairment of body function, or permanent serious disfigurement." MCL 500.3135(1). A "serious impairment of body function" means "an objectively manifested impairment of an important body function that affects the person's general ability to lead his ... normal life." MCL 500.3135(7).

In *Kreiner v Fischer*, 471 Mich 109; 683 NW2d 611 (2004), the Michigan Supreme Court articulated a multistep process to guide a trial court's consideration whether a plaintiff has sustained a threshold injury. *Id.* at 131. The trial court must first determine whether a factual dispute exists concerning the nature and extent of the plaintiff's injuries. If there is no dispute, or if a dispute exists that is immaterial to whether a plaintiff has endured a serious impairment of a body function, the court must determine whether "an 'important body function' of the plaintiff has been impaired." *Id.* at 131-132. To merit further inquiry, a court has to find both that "an important body function has in fact been impaired," and that the impairment qualifies as objectively manifested. *Id.* at 132. A plaintiff who has sustained an objectively manifested impairment of an important body function must also demonstrate that the impairment affects his or her general ability to lead a normal life. *Id.* "In determining whether the course of the plaintiff's normal life has been affected, a court should engage in a multifaceted inquiry, comparing the plaintiff's life before and after the accident as well as the significance of any affected aspects on the course of the plaintiff's overall life." *Id.* at 132-133. This analysis must be followed by an objective determination "whether any difference between the plaintiff's pre-

and post-accident lifestyle has actually affected the plaintiff's 'general ability' to conduct the course of his life." *Id.* at 133. The *Kreiner* Court summarized that "[a]lthough some aspects of a plaintiff's entire normal life may be interrupted by the impairment, if, despite those impingements, the course or trajectory of the plaintiff's normal life has not been affected, then the plaintiff's 'general ability' to lead his normal life has not been affected." *Id.* at 131.

In this case, defendant concedes that plaintiff's cervical fracture qualifies as objectively manifested, and that no factual dispute exists regarding the nature and extent of her injury. The parties' dispute focuses solely on the last of the *Kreiner* inquiries, whether plaintiff's vertebral endplate fracture affected her general ability to conduct her normal life. Accordingly, we review only that issue, and accept that plaintiff otherwise established an objectively manifested, serious impairment of an important body function. See *Netter v Bowman*, 272 Mich App 289, 306; 725 NW2d 353 (2006) ("There is no dispute that the movements of one's back and neck are important body functions.").

Plaintiff argues that because "recreational activities played a major role in her life" and she remains unable to pursue several of them, she has established a threshold injury. Specifically, plaintiff identifies as the recreational activities curtailed by her injury her inability to play billiards for six weeks, to use the trampoline, and to work on cars. This Court has recognized that limitations on recreational activities "in a person who regularly participates in sporting activities that require a full range of motion" may constitute a serious impairment of body function. *Williams v Medukas*, 266 Mich App 505, 509; 702 NW2d 667 (2005). However, "[a] negative effect on a particular aspect of an injured person's life is not sufficient in itself to meet the tort threshold, as long as the injured person is still generally able to lead his normal life." *Kreiner*, *supra* at 137. Factors considered to determine whether a plaintiff has established an impact on her general ability to lead a normal life include the following: "(a) the nature and extent of the impairment, (b) the type and length of treatment required, (c) the duration of the impairment, (d) the extent of any residual impairment, and (e) the prognosis for eventual recovery." *Id.* at 133. "Self-imposed restrictions, as opposed to physician-imposed restrictions, based on real or perceived pain do not establish this point." *Id.* at 133 n 17. The *Kreiner* Court stressed that "the totality of the circumstances must be considered, and the ultimate question that must be answered is whether the impairment 'affects the person's general ability to conduct the course of his or her normal life.'" *Id.* at 134. Although an impairment of short duration may qualify as a serious impairment of body function, "the more extensive the nature and degree of the impairment, the lesser the need for a lengthy or permanent duration of impairment in order to qualify an impairment as a serious impairment of body function." *Benefiel v Auto-Owners Ins Co*, 277 Mich App 412, 424; 745 NW2d 174 (2007), *lv gtd* 481 Mich 885 (2008).

After applying the *Kreiner* factors, we conclude that plaintiff has failed to demonstrate a genuine issue of fact that the cervical fracture has altered her general ability to lead her normal life. Plaintiff's fracture healed completely within six weeks after her injury. The sole treatment provided for plaintiff's injury consisted of pain medication and a cervical collar she had to wear for less than three months. Plaintiff has provided no evidence that a physician restricted her activities in any manner after December 19, 2005. Her current inability to work on cars is an entirely self-imposed limitation, unrelated to any actual lingering physical incapacity. Furthermore, plaintiff's inability to play billiards for six weeks, or to use the trampoline, constitute de minimus impacts on her normal life. The nature and extent of plaintiff's residual

impairments are notably less serious than those of the plaintiffs in *Kreiner*, who both failed to meet the threshold requirements for recovery.

Plaintiff contends that her continued need for prescription pain medication and muscle relaxants evidences physician-imposed restrictions tending to establish residual impairments. However, plaintiff admitted that she rarely needs the pain medication and continues to participate in the vast majority of her preaccident activities, despite that some pain may accompany extensive effort. In light of the record evidence, we conclude that plaintiff has failed to establish that the cervical fracture has affected her general ability to conduct her normal life, and that the circuit court should have granted defendant's motion for summary disposition.

The circuit court also erred to the extent that it relied on plaintiff's economic losses to measure a serious impairment of her body function. The serious impairment of body function threshold applies to noneconomic damages. Economic or "work loss" damages are paid without consideration of fault. MCL 500.3107.

Reversed and remanded for an order granting defendant summary disposition. We do not retain jurisdiction.

/s/ Peter D. O'Connell  
/s/ Michael R. Smolenski  
/s/ Elizabeth L. Gleicher